Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1978

Misc. No. 78-5419

GEORGE D. VAN CUREN,

PETITIONER,

-vs-

A. R. JAGO, SUPERINTENDENT,

RESPONDENT.

PETITION FOR A WRIT OF CERTIORARI

To The United States Court of Appeals

for the Sixth Circuit

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INDEX

	Page
Opinions Below	1
Jurisdiction	2
Question Presented	2
Constitutional and Statutory Provisions Involved	2
Statement of the Case	3
Reasons for Granting the Writ	5
1. THE FEDERAL CIRCUIT COURTS OF APPEALS HAVE RENDERED CONFLICTING DECISIONS ON THE DUE PROCESS RAMIFICATIONS OF PAROLE GRANTS AND RESCISSIONS	5
2. WHAT THE DUE PROCESS RAMIFICATIONS OF PAROLE GRANTS AND RESCISSIONS ARE IS AN IMPORTANT QUESTION OF FEDERAL LAW WHICH THIS COURT SHOULD ANSWER	6
3. PETITIONER WAS DEPRIVED OF A PROPERTY AND LIBERTY INTEREST WITHOUT DUE PROCESS	8
Conclusion	9
Appendix: Judgment and Opinion of United States Court of Appeals for the Sixth Circuit	A- 1
Order of United States District Court, Southern District of Ohio, Western Division	A- 3
Report of Magistrate for the United States District Court, Southern District of Ohio, Western Division	A- 4
Judgment and Opinion of Supreme Court of Ohio	A-11

CITATIONS

Cases	Page
AVCO Corp. v. Aero Lodge 735, 390 U.S. 557 (1968)	5
Bradford v. Weinstein, 519 F.2d 728 (4th Cir. 1974), vacated as moot, 423 U.S. 147 (1975)	5
Brown v. Lundgren, 528 F.2d 1050 (5th Cir.), cert. denied, 429 U.S. 917 (1976)	5
Childs v. United States Bd. of Parole, 511 F.2d 1270, 1280 (D.C. Cir. 1974)	5
Demar v. Wainwright, 354 So.2d 366 (Fla. 1977), cert. denied, _____ U.S. _____, 98 S.Ct. 3082 (1978)	7
Drayton v. McCall, 445 F.Supp. 305 (D. Conn. 1978)	8
Franklin v. Shields, 569 F.2d 784 (4th Cir.) (en banc), cert. denied, _____ U.S. _____, 98 S.Ct. 1659 (1978)	5
Gagnon v. Scarpelli, 411 U.S. 778 (1973)	6
Inmates of Nebraska Penal & Correctional Complex v. Greenholtz, 576 F.2d 1274 (8th Cir. 1978)	5, 7
Jackson v. Wise, 390 F.Supp. 19 (C.D. Cal. 1975)	7, 9
Joint Anti-Fascist Refugee Comm. v. McGrath, 341 U.S. 123 (1951)	6, 9
McIntosh v. Woodward, 514 F.2d 95 (5th Cir. 1975)	5
Meachum v. Fano, 427 U.S. 215 (1976)	7
Morrissey v. Brewer, 408 U.S. 471 (1972)	6, 7, 8
Robinson v. Benson, 570 F.2d 920 (10th Cir. 1978)	5
Scott v. Kentucky Parole Bd., No. 74-1899 (6th Cir., Jan. 15, 1975), vacated and remanded to consider mootness, 429 U.S. 60 (1976), on remand sub nom. Bell v. Kentucky Parole Bd., 556 F.2d 805 (6th Cir. 1977)	5, 8, 9
Sexton v. Wise, 494 F.2d 1176 (5th Cir. 1974)	7
United States, ex rel. Johnson v. Chairman, New York State Bd. of Parole, 500 F.2d 925 (2d Cir.), vacated as moot, 419 U.S. 1015 (1974)	5, 9
United States, ex rel. Richerson v. Wolff, 525 F.2d 797 (7th Cir. 1975), cert. denied, 425 U.S. 914 (1976)	5
Williams v. United States Bd. of Parole, 383 F.Supp. 402 (D. Conn. 1974)	7

INDEX (continued) Page

Williams v. Ward, 556 F.2d 1143 (2d Cir.) cert. dism., 434 U.S. 944 (1977) 7

Wolff v. McDonnell, 418 U.S. 539 (1974) 6, 7, 8

Constitutional and Statutory Provisions

Constitution of the United States, Fourteenth Amendment passim

28 U.S.C. §1254 (1) 2

Ohio Revised Code §2967.01 2

Ohio Revised Code §2967.31 . . . . . 2, 3

Secondary Authority

Jacobs "Parole: An Interest in Due Process" 6 Cap. U. L. Rev. 205 (1976) 8

IN THE

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GEORGE D. VAN CUREN,

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A. R. JAGO, SUPERINTENDENT,

RESPONDENT.

PETITION FOR A WRIT OF CERTIORARI

To The United States Court of Appeals

For The Sixth Circuit

Petitioner George D. Van Curen respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Sixth Circuit entered in this case on June 21, 1978.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit, which is not reported, appears in the Appendix hereto.

The opinion of the United States District Court for the Southern District of Ohio, Western Division, which was based on a report and recommendation of a magistrate, is not reported. Both the opinion and the magistrate's report appear in the Appendix hereto.

The judgment and opinion of the Supreme Court of Ohio, reported at 45 Ohio St.2d 298, 345 N.E.2d 75, appears in the Appendix hereto.

JURISDICTION

The judgment of the Court of Appeals for the Sixth Circuit was entered on June 21, 1978. Petitioner's Motion for Leave to Proceed in Forma Pauperis and Petition for Writ of Certiorari were filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. §1254(1).

QUESTION PRESENTED

Whether summary rescission by a state parole board of a grant of parole on or after a date certain and subsequent summary denial of parole violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Fourteenth Amendment.

Section 1 *** [N]or shall any state deprive any person of life, liberty, or property, without due process of law; ***.

Section 2967.01 of the Ohio Revised Code.

> "Parole" means the release from confinement in any state penal or reformatory institution by the adult parole authority created by section 5149.02 of the Revised Code and under such terms and for such period of time as shall be prescribed by the authority in its published rules and official minutes. A parolee so released shall be supervised by the authority.
> * * *

Section 2967.31 of the Ohio Revised Code.

> Notwithstanding any other provision for determining parole eligibility, a prisoner confined in a state penal or reformatory institution may be released on parole at any time after serving six months in the custody of the department of rehabilitation and correction, when all of the following apply:
>
> (A) The offense for which the prisoner was sentenced was an offense other than aggravated murder or murder.

> (B) The prisoner has not previously been convicted of any felony for which, pursuant to sentence, he was confined for thirty days or more in a penal or reformatory institution in this state or in a similar institution in any other state or the United States.
>
> (C) The prisoner is not a dangerous offender as defined in section 2929.01 of the Revised Code.
>
> (D) The prisoner does not need further confinement in a penal or reformatory institution for his correction or rehabilitation.
>
> (E) The history, character, condition, and attitudes of the prisoner indicate that he is likely to respond affirmatively to early release on parole, and is unlikely to commit another offense.

STATEMENT OF THE CASE

Upon his plea of guilty to embezzlement, forgery, and uttering and passing charges, petitioner George D. Van Curen was sentenced on May 22, 1972, to a term of incarceration for not less than six (6) nor more than 100 years (Van Curen Dep. at 11-14,23).[1/] Pursuant to Ohio's shock parole statute, O.R.C. §2967.31, Mr. Van Curen appeared on April 17, 1974 before a hearing panel consisting of one parole board member and a hearing officer. (Shoemaker Dep. at 10-11; Kowalski Dep. at 14-15). The panel recommended that he be granted parole on or after April 23, 1974, and the Ohio Adult Parole Authority (hereinafter OAPA) approved that recommendation that day. (Shoemaker Dep. at 11, Snyder Dep. at 10; 19-20).

On April 23, 1974, the OAPA summarily rescinded Mr. Van Curen's parole. (Coomer Dep. at 22-24). At no time during

1/ This case was submitted to the District Court below on depositions and briefs; therefore, reference to the record is made by citation of the name of the deponent and the relevant page(s).

the proceedings which resulted in the rescission of his parole grant was Mr. Van Curen given notice or an opportunity to be heard. (Snyder Dep. at 75, 91, 101-103). On June 20, 1975, the parole board convened to again consider shock parole for Mr. Van Curen, and the board summarily denied parole.

The board failed to allow Mr. Van Curen to call witnesses, have counsel or counsel-substitute, or confront adverse witnesses and review adverse reports upon whose authority parole was initially rescinded and later denied. No notice of the topics to be discussed was given Mr. Van Curen to allow him to become aware of the facts which formed the basis of either the rescission or denial, and no statement of facts or reasons for the board's actions was ever made. (Shoemaker Dep. Respondent's Stipulation at 46; Snyder Dep. at 71-72; Van Curen Dep. at 53, 76-79, 90-91).

On September 27, 1974, Mr. Van Curen initiated an original action in mandamus in the Supreme Court of Ohio challenging on due process grounds the procedures employed by the parole board. The writ was denied on March 24, 1976. This Court denied a petition for a writ of certiorari on November 15, 1976. Van Curen v. OAPA, No. 75-6955 (U.S., filed Jun. 21, 1976). On February 14, 1977, Mr. Van Curen filed a Petition for Writ of Habeas Corpus in the United States District Court for the Southern District of Ohio, Western Division. The Writ was denied on August 24, 1977. That decision was affirmed by the Court of Appeals for the Sixth Circuit on June 21, 1978.

REASONS FOR GRANTING THE WRIT

1. THE FEDERAL CIRCUIT COURTS OF APPEALS HAVE RENDERED CONFLICTING DECISIONS ON THE DUE PROCESS RAMIFICATIONS OF PAROLE GRANTS AND RESCISSIONS.

Pursuant to Rule 19 of this Court's rules, one reason to be considered in granting the writ is "[w]here a court of appeals has rendered a decision in conflict with the decision of another court of appeals on the same matter." See AVCO Corp. v. Aero Lodge 735, 390 U.S. 557, 559 (1968). The circuits are in direct conflict on the issue of the due process ramifications of parole grants and rescissions. Compare Brown v. Lundgren, 528 F.2d 1050, 1052-53 (5th Cir.), cert. denied, 429 U.S. 917 (1976) and Scott v. Kentucky Parole Bd., No. 74-1899 (6th Cir., Jan. 15, 1975), vacated and remanded to consider mootness, 429 U.S. 60 (1976), on remand sub nom. Bell v. Kentucky Parole Bd., 556 F.2d 805, 806 (6th Cir. 1977); with Franklin v. Shields, 569 F.2d 784, 800 (4th Cir.) (en banc), cert. denied, _____ U.S. _____, 98 S.Ct. 1659 (1978); Inmates of Nebraska Penal & Correctional Complex v. Greenholtz, 576 F.2d 1274, 1281 (8th Cir. 1978); United States, ex rel. Richerson v. Wolff, 525 F.2d 797 (7th Cir. 1975), cert. denied, 425 U.S. 914 (1976); Childs v. United States Bd. of Parole, 511 F.2d 1270, 1280 (D.C. Cir. 1974); Bradford v. Weinstein, 519 F.2d 728, 732 & n.3 (4th Cir. 1974), vacated as moot, 423 U.S. 147 (1975); and United States, et rel. Johnson v. Chairman, New York State Bd. of Parole, 500 F.2d 925 (2d Cir.), vacated as moot, 419 U.S. 1015 (1974) (grants). Compare McIntosh v. Woodward, 514 F.2d 95 (5th Cir. 1975) with Robinson v. Benson, 570 F.2d 920 (10th Cir. 1978) (rescissions).

To ensure uniformity of decisions in the federal courts of appeals, this Court should grant the writ. Otherwise, the due process rights of federal and state inmates will vary with geographic location, a result antithetical to the concept of a national constitution. Moreover, the number of decisions continues

to grow, not only in the Circuits, but also in the District and State courts, decisions that construe the same constitutional provision under nearly identical factual and legal situations to produce squarely and irreconcilably conflicting views of the due process interests in parole.

The importance of this issue is clear: the way in which that liberty expressly protected by the Fourteenth Amendment, Morrissey v. Brewer, 408 U.S. 471, 485-89 (1972), is granted or rescinded affects both every inmate in this country and, due to the impact of the corrections process on society, Morrissey, 408 U.S. at 484; Gagnon v. Scarpelli, 411 U.S. 778, 785 (1973), every citizen as well. In our constitutional scheme, procedural safeguards are deemed important because "[i]t is procedure that spells much of the difference between rule by law and rule by whim or caprice." Joint Anti-Fascist Refugee Comm. v. McGrath, 341 U.S. 123, 179 (1951) (Douglas, J., concurring).

Absent interpretation by this Court, the constitutional protection given an inmate's parole status will continue to differ solely because the parameters of the Due Process Clause have not yet been set on this issue. As the divergent precedent reflects, the variance does not rest on dissimilar state laws, but rather on contradictory readings of the Fourteenth Amendment and differing applications of the Morrissey and Wolff v. McDonnell, 418 U.S. 539 (1974), decisions. Thus, the writ must be granted to resolve this conflict.

2. WHAT THE DUE PROCESS RAMIFICATIONS OF PAROLE GRANTS AND RESCISSIONS ARE IS AN IMPORTANT QUESTION OF FEDERAL LAW WHICH THIS COURT SHOULD ANSWER.

A second catalyst for granting a writ under Rule 19 is the nature of the legal issue. "Where a court of appeals. . .has decided an important question of federal law which has not been, but should be, settled by this court," the writ may be granted. Sup.

Ct. R. 19(1)(b). At issue here is an important federal question about interpretation of the Due Process Clause and application to a corrections process that touches on both inmate and societal interests. If the conflicting decisions and geographical variations are to stop, the issue must be settled by the only court with the power to ultimately resolve legal questions about construction of the Constitution of the United States. Moreover, this Court should act because, in large measure, the lower federal courts have been stymied by this Court's decisions.

> The Supreme Court has not decided the exact question before us of whether a prisoner's interest in prospective parole is an interest to be afforded protection under the due process clause of the Fourteenth Amendment. It must be acknowledged that there are indications both ways in recent Supreme Court opinions.

Inmates of the Nebraska Penal & Correctional Complex v. Greenholtz, 576 F.2d at 1279 (citation omitted). See also Williams v. Ward, 556 F.2d 1143, 1157 (2d Cir.), cert. dism., 434 U.S. 944 (1977) ("Whether the Supreme Court will adjudge a parole applicant's interest in the prospect of conditional liberty on parole to be insufficient to trigger due process protections is still unsettled, ...The past observations of the Court have pointed in both directions.") (citation omitted).

Importantly, resolution of the due process issue is not simply a matter of state law. Cf. Meachum v. Fano, 427 U.S. 215 (1976). Rather, the Morrissey-Wolff grievous loss analysis of the Due Process Clause liberty interest in parole has been relied on by lower federal and state courts to reach conflicting results. See, e.g., Jackson v. Wise, 390 F. Supp. 19, 30 (C.D. Cal. 1975); Williams v. United States Bd. of Parole, 383 F. Supp. 402, 404 (D. Conn. 1974); Demar v. Wainwright, 354 So.2d 366 (Fla. 1977), cert. denied, ____ U.S. ____, 98 S.Ct. 3082 (1978); Sexton v. Wise, 494 F.2d 1176, 1178 (5th Cir. 1974). Indeed, the same issue

plagues the United States Parole Commission. Drayton v. McCall, 445 F. Supp. 305, 308 (D. Conn. 1978).

Parole procedures and criteria are essentially the same in every state. The enabling laws raise, as does Ohio's, an expectation both that compliance with the enumerated criteria will lead to parole and that such compliance will be gauged in a manner consistent with the constitutional significance of the property and liberty interest created by enactment of a parole process. The essential issue is not the state law's procedural safeguards; instead, the issue is whether, as a matter of federal constitutional law, an interest is created which merits due process protection. Then, whatever procedures state law provides can be measured against the Morrissey, 408 U.S. at 485-89, and Wolff, 418 U.S. at 563-71, models of the process that is due.

Thus, "[t]he constitutional issue is whether either the outright denial, or the imposition of parole conditions, has the kind of impact on liberty that must be preceded by 'due process'." Scott, 429 U.S. at 60-61 (Stevens, Brennan and Powell, J. J., dissenting). That issue has not been, but should be, decided by this Court; therefore, the writ must be granted.

3. PETITIONER WAS DEPRIVED OF A PROPERTY AND LIBERTY INTEREST WITHOUT DUE PROCESS.

Though the decisional law conflicts, the proper interpretation of the Due Process Clause yields protection for parole grants and rescissions. A due process interest, anchored in state law, and custom,is created by parole statutes and should not be denied without a constitutionally sufficient procedure to determine whether the statutory criteria were satisfied. See Jacobs, "Parole: An Interest in Due Process," 6 Cap. U. L. Rev. 205 (1976). That interest, traceable from the conditional liberty recognized in Morrissey, is at stake when the parole decision is made - the prisoner will be set free, albeit on conditional release. See Johnson, 500 F.2d at 928. Further, in rescinding a parole grant, some interest is clearly divested of the inmate. See Jackson, 390 F. Supp. at 30.

A writ must issue to the Court of Appeals for the Sixth Circuit because its decision denying due process protection to petitioner failed to recognize the property and liberty interest he had in both the rescission of his parole grant and its subsequent denial. As the briefs will show, the facts used, to the extent discovery in the proceedings below has ascertained them, there being no statement of reasons for the parole board's actions, were susceptible to refutation and explanation. Yet, petitioner was not given the minimal safeguards of fair notice and a meaningful opportunity to be heard. Joint Anti-Fascist Committee, 341 U.S. at 168 (Frankfurter, J., concurring).

CONCLUSION

This issue will not go away. It has often been before the Court for merits review, but remains an unsettled question. Uniformity is appropriate and necessary, but divergent lower court opinion are continuing to be rendered. The importance of the due process ramifications of parole grants and rescissions stems from the number of parole release decisions, their critical significance to a prisoner, and the amount of litigation that a lack of resolution foments. Scott, 429 U.S. at 61 n.1 (Stevens, Brennan, and Powell, J. J., dissenting). For these and the foregoing reasons, the writ must be granted.

Respectfully submitted,

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APPENDIX

FILED
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U.S. DISTRICT COURT
SOUTHERN DIST.
WEST DIV. CINCINNATI

NO. 77-3558

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

C-1-77-67

GEORGE D. VAN CUREN

Petitioner-Appellant

v.

ARNOLD R. JAGO, Superintendent

Respondent-Appellee

Indexed
Docketed 7/6
Journal
Motion
Issue Cmt C
Card

O R D E R

BEFORE: PHILLIPS, Chief Judge; and LIVELY and KEITH, Circuit Judges.

This is an appeal from denial of a petition for habeas corpus. The petitioner, a state prisoner, was selected for "shock parole" at a future date and was so advised. Petitioner then prepared and submitted a parole plan which was never approved. Prior to the date on which he would have been released on shock parole the parole board rescinded its previous decision on the basis of a determination by a parole board investigator that there was a misrepresentation in the petitioner's parole plan and that he had misrepresented the magnitude of his crime at his hearing.

Upon consideration of the briefs and oral arguments of counsel together with the record on appeal the court concludes that the petitioner had an expectation of release on parole at most and that he had neither a property interest nor a liberty

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interest which entitled him to a due process hearing on rescission of the earlier decision to grant shock parole. The court concludes that Morrissey v. Brewer, 408 U.S. 471 (1972), which dealt with the rights of one already free on parole does not require a decision different from that reached in this case.

The judgment of the district court is affirmed.

ENTERED BY ORDER OF THE COURT

John P. Hehman
Clerk

A TRUE COPY.
Attest:
JOHN P. HEHMAN, Clerk
By [signature]
Deputy Clerk

Issued as Mandate: July 13, 1978
COSTS: None

3/

FILED
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U.S. DISTRICT COURT
SOUTHERN DIST. OHIO
WEST DIV. CINCINNATI

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

GEORGE D. VAN CUREN — NO. C-1-77-67

Petitioner,

v.

A. R. JAGO, Supt., — ORDER

Respondent.

Indexed
Docketed
Journal
Motion
Issue
Card

This habeas corpus case was submitted on the petitioner's petition (doc. 2), respondent's return of writ (doc. 5), petitioner's reply to return of writ (doc. 7) and the respondent's reply to petitioner's reply (doc. 9).

The matter was referred to the United States Magistrate for report and recommendation pursuant to Western Division Rule No. 1, In re: United States Magistrate, filed June 22, 1977.

The matter is before the Court now on such report and recommendation of the Magistrate.

After consideration, the Court finds the report well reasoned and the recommendation that the petition for writ of habeas corpus be denied is supported by applicable law.

The Court therefore approves and adopts the report of the Magistrate at its own. Accordingly, for reasons set out in the report of the Magistrate, the petitioner for writ of habeas corpus is hereby denied.

David D. Porter
United States District Judge

AUG 26 1977

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

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W. DIV.

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GEORGE D. VAN CUREN, :

Petitioner, : NO: C-1-77-67

vs. :

A. R. JAGO, SUPERINTENDENT, : REPORT OF MAGISTRATE

Respondent. :

Inmate George D. Van Curen has filed a petition for writ of habeas corpus seeking to set aside the rescission of his parole on the ground that the rescission violates his constitutional rights. The essential facts are as follows:

After entering a plea of guilty to charges of embezzlement, forgery and uttering and passing forged instruments in the Cuyahoga County Court of Common Pleas, petitioner was sentenced on May 22, 1972 to a term of not less than six nor more than 100 years in the Ohio Penitentiary. In January of 1974, the Ohio legislature enacted O.R.C. § 2967.31, which permitted inmates such as petitioner to be considered for shock parole (early parole). A panel consisting of a Parole Board member and a hearing officer interviewed Mr. Van Curen, and on April 17, 1974, granted him shock parole "on or after" April 23, 1974.[1/]

1/ An "on or after" date is used in granting parole since any grant is conditional pending approval and investigation of the parole plan which the inmate must prepare once he is granted parole (Shoemaker, Depo., p. 30).

Presumably the two hearing officers had been impressed with both the information Mr. Van Curen gave them at the hearing and his record. Petitioner had no prior criminal record, had not been disciplined while incarcerated, and had been commended for his performance during 1000 hours of nurse's training at the Correctional Medical Center's James Hospital. Also, he had received a graduate diploma and a high job performance rating as a clerk while in prison, and he had a job waiting upon his release.

He described his crime as the embezzlement of approximately one million dollars and said he had cooperated with attempts to recover the lost funds.

On April 23, 1974, after petitioner had begun the release process but while he was still incarcerated, the Parole Board rescinded its grant of parole. The Board issued special minutes which stated that the "technical matters pertaining to this case should be more fully explored" (Doc. 2, attachment D). The Board did not base its action on information produced by the routine investigation, mentioned above, to which all parolees are subjected before release. In fact, the Board had not received any official report. The record indicates, however, that the Board did receive additional information which caused it to suspect that the decision to grant parole was unsound.

While the Board was in session on April 23, 1974, the Board's absent chairman, Nolan Snyder, telephoned to report he had learned that in the parole plan petitioner had submitted, he had stated falsely that he would be living with his half-brother while on parole. Actually, the man named was not related to petitioner at all, although Mr. Van Curen has testified that the sponsor was close to

his family. Snyder reported further that the magnitude of petitioner's crime had not been described fully to the original panel (Snyder deposition at p. 31). The amount stolen had been closer to six million dollars than to the one million dollars admitted by petitioner. Snyder also informed the Parole Board that the trial judge and the prosecuting attorney had protested vigorously the granting of shock parole to petitioner (Snyder deposition at p. 23-4). In addition, Snyder apparently thought the Board should take into consideration the community attitude in the Cleveland area which was against Van Curen's being paroled. The local paper, for instance, had printed articles criticizing the panel's decision, and the Board had received correspondence adverse to petitioner (Doc. 2, p. 5).

The day after the Board tentatively rescinded Mr. Van Curen's parole, he was notified of that action and scheduled to appear before the full Board for a hearing at its June meeting. At that meeting on June 20, 1974, petitioner's shock parole was denied.

In his petition, Mr. Van Curen contends that the actions taken by the Board after granting parole on April 17, 1974 denied him due process of law. He claims that he should have been given a neutral hearing with notice of the topics to be discussed, opportunity to present and confront witnesses and access to the information upon which the Board was relying. He argues that his right to these procedures is grounded in state law and supported by precedent.

The theory that petitioner has a due process interest grounded in state law stems from a Supreme Court decision, Wolff v. McDonnell, 418 U.S. 539 (1974). In Wolff, the Court

decided that a prisoner must be given a hearing before being deprived of good time. In doing so, it looked to the state statute which created the right to good time.

The Court noted that:

> The State having created the right to good time and itself recognizing that its deprivation is a sanction authorized for major misconduct,... [the Due Process Clause requires] that the State created right is not arbitrarily abrogated. 418 U.S. at 556-7.

Thus, where the state establishes statutory rights and a standard for their denial, i.e., "major misconduct," the state must afford the prisoner minimal due process to ascertain whether that standard has, in fact, been violated.

In contrast, the shock parole statute under which Mr. Van Curen tentatively was granted parole does not provide a standard for its recision. Therefore, there exists no state created right to procedural safeguards before he may lose his grant of shock parole. In fact, far from giving the petitioner a definite interest in shock parole which has been granted but not effected, the Ohio legislature has left his status entirely within the discretion of the Parole Board. It is well settled in Ohio that the Pardon and Parole Commission may rescind the granting of parole prior to the time of its taking effect. Zenz v. Alvis, 66 Ohio L. Abs. 606, Ohio Appeals, Second District, 1951. Moreover, the word "parole" as used in the statute means the actual release from confinement, State ex rel Newman v. Lowery, 61 Ohio L. Abs. 337, aff'd. 157 O.S. 463 (1952). Thus, petitioner's situation

does not fall within the reasoning of the Wolff doctrine.

Nor do other cases cited by petitioner create a right to a hearing before the Board may rescind his parole. The only appellate level case directly in point which the parties have cited to us, Sexton v. Wise, 494 F. 2d 1176 (5th Cir. 1974), is adverse to petitioner. In that case the Court held that a prisoner, who had been granted a future date for parole which was summarily rescinded,

> was not entitled to a hearing since the process of obtaining parole had never reached completion and the due process protections of Morrissey v. Brewer [discussed infra] applicable to revocation were not applicable, 494 F. 2d at 1177.

We adopt the reasoning of Sexton to decide this case.

Recent decisions of both the Supreme Court and the Court of Appeals for the Sixth Circuit support our holding.

The case most favorable to Mr. Van Curen which bears discussion is Morrissey v. Brewer, 408 U.S. 471 (1972). There the Court stated that,

> The liberty of a parolee, although indeterminate...is valuable and must be seen as within the protection of the Fourteenth Amendment. Its termination calls for some orderly process, however informal. 408 U.S. at 482.

Morrissey is distinguishable from a case where the parolee has not yet been released. The language used by the Court in Morrissey indicates that the distinction is a valid one.

> The liberty of a parolee enables him to do a wide range of things open to persons who have never been convicted

> of any crime. The parolee has been released from prison based on an evaluation that he shows reasonable promise of being able to return to society and function as a responsible self-sufficient person. 480 U.S. at 482.

Petitioner, of course, was not released from prison. In addition, the initial evaluation of his ability to return to society has been discredited.

Supreme Court decisions of the past two years exhibit a more stringent limitation of the due process rights of prisoners than did Morrissey. The following cases address the issue of whether a due process hearing must precede certain changes in a prisoner's status. In Baxter v. Palmagiano, 425 U.S. 308 No. 74-1187, (April 20, 1976), the Court held that Wolff notwithstanding, the rights of the prisoner in prison disciplinary proceedings, including the right to counsel and confrontation of witnesses, are within the sound discretion of the prison officials and may be denied summarily.

Montanye v. Haymes, 427 U.S. 236, No. 74-520 (June 25, 1976), involved the transfer of prisoners to less desirable institutions. Montanye held that where under state law the prisoner has no justifiable expectation that he would not be transferred, the Due Process Clause of the Fourteenth Amendment does not require a hearing in connection with the transfer of a prisoner. The holding of Montanye is especially damaging to petitioner's case since the Montanye Court refused to subject the motives of the officials who made the changes to constitutional review.

Consistent with these Supreme Court cases, the Court of

Appeals for the Sixth Circuit recently held that prisoners are not entitled to certain procedural rights before placement in more restrictive security penitentiaries, or before significant and adverse effects. The procedural rights which the Court concluded are unnecessary include the right to written notice of the charges, the right to call witnesses and produce evidence, the right to confront the accusing officer, the right to cross-examine adverse witnesses, the right to a written decision based only upon the evidence produced at the hearing and the right to counsel or counsel substitute in certain situations. (Walker v. Hughes, ____ F. 2d _____, No. 76-1974, June 24, 1977.)

This review of cases discloses that the officials of the prison system may make changes in the status of prisoners within their custody without granting any procedural protection whatsoever. Petitioner Van Curen, therefore, has no remedy in federal court (Sexton, supra). For this reason, it is recommended that the petition for writ of habeas corpus be denied.

J. Vincent Aug Jr.
United States Magistrate

THE STATE, EX REL. VAN CUREN, *v.* OHIO ADULT PAROLE AUTHORITY ET AL.

[Cite as State, ex rel. Van Curen, v. Adult Parole Authority (1976), 45 Ohio St. 2d 298.]

Mandamus—To compel Adult Parole Authority to recall order—Writ denied, when.

(No. 74-802—Decided March 24, 1976.)

IN MANDAMUS.

Mr. Louis A. Jacobs and *Mr. Stanley K. Laughlin, Jr.*, for relator.

Mr. William J. Brown, attorney general, and *Mr. Thomas D. Rooney*, for respondents.

Per Curiam. On April 17, 1974, relator was granted shock parole by respondent Ohio Adult Parole Authority, to be effective on or after April 23, 1974. Before relator was released from custody, respondent rescinded the action taken on April 17, 1974, and continued the matter of relator's parole for further investigation to June 1974. On June 20, after a hearing, parole was denied.

Relator, who remains incarcerated, now seeks an order of this court to compel respondent to recall its decision of June 20, 1974, and make effective the action taken April 17, 1974.

Relator argues that when respondent granted him parole effective on or after April 23, 1974, an interest protected by the Due Process Clause of the Fourteenth Amendment to the United States Constitution attached to relator and could not be rescinded or continued by respondent without a hearing. This is argued notwithstanding the fact that the grant of parole was rescinded before relator was to be released from confinement.

The Adult Parole Authority has no regulation requiring a hearing prior to rescinding the grant of a parole before release.

In *State, ex rel. Newman*, v. *Lowery* (1952), 157 Ohio St. 463, involving a similar fact situation, this court stated that the "* * * [Pardon and Parole] Commission had authority to rescind its order * * * granting a parole effective on or after a future date. * * *"

Mandamus lies only to command performance of an action which the law specially enjoins as a duty resulting from an office, trust or station. R. C. 2731.01. No such duty having been shown, the writ is denied.

Writ denied.

O'NEILL, C. J., HERBERT, CORRIGAN, STERN, CELEBREZZE, W. BROWN and P. BROWN, JJ., concur.